



OPLA~Notes

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Newsletter Greetings

Welcome to the December 2002 edition of OPLA~Notes. This edition includes an article on the issue of rail transportation in Maine, including a discussion of recent commissions formed by the Legislature to examine rail transportation. The newsletter also includes an article on new legislation regarding charities and other nonprofits that serve the public, and an article on the Law and Legislative Reference Library's web site redesign. In addition, this newsletter also includes a listing of study reports from the 120th Legislature, Second Regular Session that are currently available from the Office of Policy and Legal Analysis.



Task Force on Rail Transportation

The role of freight rail transportation in Maine has been a familiar policy question in recent legislative sessions. However, the issue gained particular momentum during the 120th Legislative Session. Resolve 2001, chapter 120 established the Task Force on Rail Transportation consisting of 13 members, 7 legislators and 6 members appointed for their expertise in various aspects of rail transportation.

The Task Force convened on August 9, 2002 and held 5 meetings with its last meeting on October 18, 2002. The Task Force heard presentations by and consulted with representatives from state agencies, stakeholders in the industry and economic development specialists. The meeting held in Auburn included a visit to the intermodal facility operated by St. Lawrence & Atlantic Railroad.

Two topics of immediate concern as the Task Force began its deliberations were the disposition of Bangor and Aroostook Railroad's assets and plans for State-owned rail between Calais and Brewer, known as "the Calais Branch." These topics are briefly summarized below.

1. Disposition of Bangor and Aroostook Railroad's Assets

The Task Force monitored the bankruptcy proceedings for the Bangor and Aroostook Railroad. At its final meeting, Edward A. Burkhardt, the President of Rail World, Inc. and its subsidiary, Montreal, Maine & Atlantic Railway (MMA), appeared before the Task Force to talk about MMA's success in acquiring substantially all of Bangor and Aroostook's rail assets and its plans for operation. MMA is working with shippers to assure them

that a solvent company will be operating the rail lines and will accommodate their needs.

As part of the larger plan for the BAR lines, MMA recently acquired certain lines from Canadian Pacific Railway that were previously leased to Quebec Southern Railway. This facilitates a major interchange connection with CPR and marketing joint MMA-CPR service through the Montreal gateway.

2. Plans for the Calais Branch

At the August 30th meeting, Commissioner John Melrose gave the Task Force an overview of the MDOT's proposed plans for the Calais Branch. The plan includes preserving the rail from Calais to Ayers Junction, retaining the State-owned rail corridor between Ayers Junction and Perry, removing the rail between Ayers Junction and East Machias to accommodate recreational use along that corridor; and keeping rail in place between East Machias and Brewer.

Members of the Eastern Maine Rail Development Commission (EMRDC) urged the Task Force to implement the recommendations in a 1998 report to the Maine Legislature made by the Commission to Study Establishing a Rail Authority to Develop Rail Service from Calais to Eastport and Brewer. Following these recommendations would ultimately result in rehabilitation of the entire Calais Branch from Calais to Brewer. In keeping with a broader recommendation, the Task Force recommended that the rail between East Machias and Ayers Junction remain in place and the entire Calais Branch corridor be preserved for possible reactivation in the future.

Recommendations

The Final Report of the Task Force on Rail Transportation provides a summary of discussions on several other topics relating to freight rail, passenger rail, equitable distribution of public resources to support transportation, and funding sources. Based on their discussions, the Task Force formulated 17 recommendations. The following is a partial list of their proposals.

The Task Force recommended that:

- MDOT continue to acquire abandoned rail right-of-way to preserve rail corridors;
- the State leave the rail intact on any branch owned or acquired by the State; when MDOT, in consultation with the Regional Transportation Advisory Committee

and regional economic planning entity, determines that a specific length of rail can be removed without a negative impact on a region or on future economic opportunities for that region, the Commissioner of Transportation shall seek review and approval of the Joint Standing Committee on Transportation prior to removal;

- MDOT maintain all State-owned rail line and rehabilitate State-owned lines according to a priority listing based on the condition of the line and the activity and potential activity on the line;
- MDOT, the Department of Economic & Community Development and the State Planning Office coordinate their activities to ensure that transportation improvements and potential use of both passenger and freight rail are considered during economic development activities;
- the statutory duties of the Commissioner of Economic & Community Development be amended to include responsibility for this coordination;
- a Freight Transportation Advisory Committee be established in statute with criteria for membership and an advisory role similar to that of the existing Freight Transportation Advisory Committee convened by the Commissioner of Transportation;
- MDOT facilitate communications between the RTACs (Regional Transportation Advisory Committees) and regional and state economic development initiatives;
- all revenue received from the railroad excise tax imposed under Title 36, chapter 361 be deposited in the Rail Preservation and Assistance Fund;
- Maine Revenue Services be directed to track the amount of use tax paid by railroads on fuel that qualifies for the tax refund under 36 MRSA §3218 and that this amount be deposited in the Rail Preservation and Assistance Fund;
- the Joint Standing Committee on Taxation review the statutory provision for taxes that apply to railroads operating in Maine, consider the impact of these provisions and recommend revisions to improve the viability of railroads operating in this State;

- MDOT to continue to pursue all sources of federal funds, including funds available for extending passenger rail service in Maine; and
- the Commissioner of Transportation develop priorities for rail projects within the context of regional transportation corridors.

The final report of the Task Force will be available in December 2002 at the Legislative Law Library or by contacting the Office of Policy & Legal Analysis.

Did You Know?.....



The Cleveland Indians were named in honor of Louis Sockalexis, a native Maine Indian who was the first Native American to play professional baseball. Before it became the Indians, the Cleveland team was known as the Spiders.



The State of Maine has over 21,000 miles of public highways, exceeding the total mileage of any other New England state.

Recent Legal Issues



New Law Focuses on Charities and other Nonprofit Entities that Serve the Public

The 120th Legislature enacted An Act Regarding Public Charities, Nonprofit Corporations and Conversions of Nonprofit Entities to For-Profit Charities effective January 1st, 2003. The purpose of this act, Public Law 2001, chapter 550, is to ensure proper management of charities and other nonprofit entities that are supposed to benefit the public, and to ensure that the assets of those entities are not misused. The law may have an impact on the operations of large and small charities and nonprofits serv-

ing local communities and the State, including humane societies, food banks, literacy volunteers, conservation organizations and any other Maine-based non-profit entity that serves a public purpose.

In brief, the law does the following:

1. Provides clear authority to the Attorney General to oversee and investigate public charities and how they use funds;
2. Adds provisions to the general nonprofit corporation law to protect against conflicts of interest and to require notice of major corporate changes; and
3. Establishes a process for review of “conversions” of nonprofit assets to for-profit use, ensuring that the charitable assets are reserved for public purposes.

The law resulted from a bill (LD 1770) that was introduced in the 1st Regular Session of the 120th Legislature, considered by the Joint Standing Committee on Judiciary and carried over to the 2nd Regular Session. During the interim between sessions, the bill was discussed and reworked into a new proposal by a group of almost 30 interested parties, including representatives of the Office of the Speaker of the House, Office of the Attorney General, associations of nonprofits as well as individual nonprofit organizations, the Bureau of Insurance, and a number of lawyers with expertise in charitable and nonprofit corporation law. The Judiciary Committee considered the reworked proposal, made some changes, and (with a divided report) sent it on to the floor of the House and Senate where it was enacted.

Changes to Title 13-B, the Maine Nonprofit Corporation Act

The new law divides nonprofit corporations into 2 categories: “public benefit corporations” and “mutual benefit corporations.” Public benefit corporations are (1) organizations that are exempt from taxes under section 501(c)(3) of the Internal Revenue Code, (2) organizations organized for public or charitable purposes and restricted in their use of assets, and (3) corporations designated by statute or by their own election as public benefit corporations. Nonprofit corporations that are not included in that group are considered mutual benefit corporations.

Public benefit corporations are subject to a number of new laws. No more than 49% of the directors of a public benefit corporation can be “financially interested” in the corporation. Specific standards are set out for transactions that involve a conflict of interest or creation of subsidiaries or joint ventures. In addition, the corporation must notify the Attorney General of significant changes in the corporation, such as amendments to their articles of incorporation that change the nature of activities to be conducted, mergers and consolidations and certain judicial proceedings.

Conversion of Public Charity

The new law enacts standards and a process for reviewing and approving the conversion of charities and nonprofits to for-profit companies. A law enacted in 1997 set forth a process for reviewing and approving the conversion of Blue Cross from a mutual insurance company to a for-profit company, but no general law existed. Public Law 2001, chapter 550 now provides the necessary guidance.

Under the new law, a “conversion” may occur when the assets or governance of a public charity are transferred to an entity that is not a public charity, and the public charity does not receive fair market value in return for the transfer. Nonprofit entities involved in drafting the law were concerned that ordinary business transactions would be considered conversions, so the law very carefully describes which transactions are subject to the law and which are not.

A conversion involving assets of more than \$50,000 must be approved by the Attorney General or the Superior Court, depending on the value of assets. The conversion cannot be approved unless the public charity gets fair market value for the assets and the proceeds of the transaction will be used to continue the mission of the public charity. The proceeds of the transaction must be transferred to a foundation or public benefit corporation independent of the for-profit entity. The public must be notified of the review process and be given an opportunity to comment on the proposed conversion plan.

Attorney General Authority over Charities

The third piece of the new law provides clear authority for the Attorney General to oversee public charities. Even before enactment of Public Law 2001, chapter 550, the Attorney General had some degree of authority over charities under the common law and Title 5, section 194

of the Maine statutes. The extent of the Attorney General’s authority under that section, however, was unclear and in cases such as the proposed sale of MELMAC’s student loan portfolio, created confusion and litigation. Chapter 550 provides greater clarity by defining “charities” to include corporations formed for charitable purposes as well as charitable trusts. It also allows the Attorney General to investigate a charity without filing a lawsuit against it, if he or she suspects that the charity is misusing funds.

Advice for Charities and Nonprofit Corporations

The Office of the Attorney General has published a booklet describing many of the regulations applicable to charities and public benefit corporations. The booklet is entitled “A Guide for Board Members of Charitable Corporations” and can be downloaded from the Internet at <http://www.maine.gov/ag>. Questions about the conversion law, Attorney General oversight of public charities and many of the nonprofit corporation changes can be addressed to the Office of the Attorney General.

During the year 2003, corporations organized under Title 13-B, the Maine Nonprofit Corporation Act, must declare on an annual report or other filing with the Secretary of State whether they are a “public benefit corporation” or a “mutual benefit corporation.” A corporation that fails to do so will be considered to be a public benefit corporation, subject to the more stringent law, until a proper filing is made with the Secretary of State.



Law and Legislative Reference Library @ Home on the Web www.state.me.us/legis/lawlib

The Law and Legislative Reference Library has launched a new web site designed to help people seeking legal and governmental information feel at home on the web. The new site welcomes users with expanded content, improved navigation, and an appealing visual design.

The new site is an effort to apply what the library staff has learned about being at home on the web. During the design process the needs of users of the site were para-

mount. Library reference staff had learned about those needs by maintaining an Internet site and responding to electronic reference requests for five years. Those requests gave a clear picture of what users were looking for online and what they were having difficulty finding. At the same time librarians were gaining experience from conducting Internet research and from developing a system of research links for the Internet computers in the Library. The new site is a product of several years of experience and several months of design work.

The Design Process

The design process began with consideration of the impression the new site would convey. At this point the focus was not on information content, but rather on the initial visual impression, the perceived quality of library service, and the user's experience using the site. Reference librarians discussed and ultimately came to some agreement on nearly a page of adjectives that were used to guide the organization of the site, the presentation of the content, and the visual design. Consideration of the various groups that would make up the web site audience led to the development of a list of specific goals for the site.

Organization of the information next became the focus. Cards were made for each existing page and grouped to find the best organization to meet the needs of our users. This process also suggested possible new pages. Finally a team of librarians started to create the new homepage and the internal pages that would guide the user to the information content. A lot of thought went into these pages, because they would essentially ask the user to make some decisions: Is he or she looking for legal or governmental information on the web, for a book or journal in the Library, for a way to contact a reference librarian, or for some assistance with legislative research? The list of adjectives continued to serve as a guide: the new site should be user-friendly, intuitive, logical, and empowering.

New site content

Many pages from the existing library web site remained useful. For example, the page listing legislative publications with links for accessing them on the Internet was retained. Also retained was the index library staff compiled to *LegisBrief*, a regular publication of the National Conference of State Legislatures on current issues of legislative interest. Maintaining this page on the Internet

makes the index available to state legislatures across the country.

User requests also suggested some new pages. One was a page with answers to the questions we receive most frequently relating to Maine Law ("What is Maine's law on...?"). Many library users represent themselves or act as their own lawyers. A new page with information links about the courts, law libraries, and sources of assistance and information for people who don't have legal training is an effort to assist these users. The goal of these new pages is to help people find the information they need themselves and to serve as a starting point for framing specific questions to send to the reference librarians via the reference e-mail page.

Improved navigation

One of the goals for the new site was to improve the ability of users to find a variety of information, including not only information about the library, such as our hours and services, but also substantive information compiled by library staff, such as the historical lists of officials and voting on questions placed before the voters. Each new page has a standard set of quick links at the top to Maine bills, statutes, and regulations. In addition, users are now expecting to research legal and governmental topics on the Internet. This meant that the new page needed to integrate the research links collected for Internet users in the Library. The sites were carefully selected by the reference librarians, organized into broad categories, and briefly annotated so that users would have some idea what they could expect to find. The Focused Subject Areas page gives annotated links for specific subjects, including elections, disability law, and consumer law.

Focusing on the needs of the user also helped us to understand that users seeking information on the Internet do not really care who may be responsible for a particular page. In other words, it is not necessary to highlight the pages maintained by the Library and separate them from other research links by listing them on the homepage. Navigation in the new site is based on the substance of the information rather than on the source. A new *iResearch* page directs users to the best online resources for legal and governmental research, only some of which are library pages. The new site includes many links to sites not maintained by the Library or the Legislature.

Finally, an improved site index is linked at the bottom of each page. The index takes users directly to pages in the site and to content on an individual page. For example,

the index provides access not only to the Focused Subject Areas page, but also to the subject categories on the page.

Visual appeal

Good graphic design can improve not only the visual appeal of the site, but can also enhance navigation. All pages in the new site share a similar design in terms of font, color, and overall design. The headline font was selected carefully, and consideration was given to the colors and the use of white space in terms of the overall design. The list of adjectives again served as a guide: the aim was a visual impression that was inviting, accessible, dignified, interesting, and dynamic. The design team then decided on the standard links that would appear on each page, their placement on the page, and what they would look like. Each page has its own banner with an appropriate photo.

You are invited to visit the new site, and your suggestions are welcome. Please let the Library know how they can help you feel at home on the web.

Internet Intersection

Policy and Government



National Academy of Social Insurance: The National Academy of Social Insurance (NASI) is a nonprofit, nonpartisan research and education organization made up of the nation's leading experts on Social Security, Medicare, and other social insurance programs. The NASI website contains information about the academy, current projects, publications, conferences and events, and relevant links to other Internet resources.

www.nasi.org

National Legal Center for the Public Interest:

The National Legal Center for the Public Interest, created in 1975, contributes to the development of public debate and policy by providing the public and private sectors with timely information on key legal, legislative, regulatory and economic issues of national importance. The website offers access to publications, forums, related links and provides a Supreme Court Resource Center.

www.nlcpi.org

Law and Legislative Reference Library: Provides access to the URSUS catalog, collections information, reference information, legislative history instructions, interlibrary loan information and lists of Justices for the Maine Supreme Judicial Court and Maine Attorneys General.

www.state.me.us/legis/lawlib



Science and Technology

Seekhelp: This website offers users assistance in conducting Internet searches, including instructions on how to use the major search engines, how to search the news groups, how to search regional web guides and how to use specialty search sites.

www.seekhelp.com

iTools: This website offers quick access to search tools, including web searches, web directories and discussion groups; language tools, including dictionaries, computer terms, text translator and a Web page translator; and research tools, including encyclopedias, newspapers and magazines, topic guides, biographies and quotations.

www.itools.com

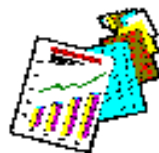
Reference



Mediaworld: This website is a news and newspaper search tool. Newspapers are categorized into sections allowing the user to browse by region, language, category or time period. The website also allows a user to search newspapers alphabetically and to choose news stories by categories such as world news, breaking news, business news, local news and many more.

www.mediaworld.info

General Interest



C-Span Capitol Questions: This C-Span website allows the users to get answers to questions about the legislative process and the federal government. The website is divided into four categories: Congress; the House

of Representatives; the Senate; and impeachment. This website also provides a glossary of terms and titles used on Capitol Hill.

www.c-span.org/questions



OPLA Publications

- **Study Reports** - A listing of study reports of legislative committees and commissions categorized by year beginning in 1973 is available from OPLA. For printed copies of any of these reports, please contact the Office of Policy and Legal Analysis. The first copy of a report is free; additional copies are available at a nominal cost. In addition, many of the recent legislative studies staffed by OPLA are available on the OPLA website at the following address:
<http://www.state.me.us/legis/opla/reports2.htm>.

Recent study reports currently available include the following:

- Interim Report of the Blue Ribbon Commission to Address Financing of Long-term Care
- Final Report of the Commission to Study the Needs and Opportunities Associated with the Production of Salmonid Sport Fish in Maine
- Final Report of the Task Force on Rail Transportation
- Final Report of the Commission to Study Fatherhood Issues
- Final Report of the Commission to Study the Impact of a Maine-based Casino on the Economy, Transportation, Infrastructure, State Revenue and Job Market

A Word About OPLA

The Office of Policy and Legal Analysis (OPLA) is one of several nonpartisan offices of the Maine State Legislature. It operates under the auspices of the Legislative Council. The office provides professional staff assistance to the joint standing and select committees and study commissions, including providing policy and legal research and analysis, coordinating the committee process, drafting bills and amendments, analyzing budget bills in

cooperation with the Office of Fiscal and Program Review and preparing legislative proposals, reports and recommendations.

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